

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

TIMEBASE PTY LTD.,)
Plaintiff,) Civil Action Nos. 07-cv-1687
v.) and 07-cv-04551 (JNE/JHG)
THE THOMSON CORPORATION,) Honorable Joan N. Erickson
WEST PUBLISHING CORPORATION,) Magistrate Judge Jeanne J. Graham
AND WEST SERVICES, INC.,)
Defendants.) JURY TRIAL DEMANDED

STATUS REPORT REGARDING REEXAMINATIONS

TimeBase asserts infringement of two patents by the defendants. The patents are United States Patents No. 6,233,592 and 7,293,228, "System for Electronic Publishing."

TimeBase filed suit for infringement of the '592 patent in 2006, and the case was transferred here in March, 2007 on the defendants' motion. An anonymous third party requested reexamination of the '592 patent on January 29, 2007. Thereafter, the defendants moved for a stay of the litigation pending completion of the reexamination. The defendants' motion stated that the "median time for reexamination (measured from filing date of the request to certificate issue date) is 17.6 months or 1.3 years." (Document 35 in 07 CV 1687). In June, 2007, the court granted the motion for a stay, and directed from the bench that the parties submit periodic status reports.

TimeBase filed a second case in November, 2007, asserting the '228 patent. It is not in reexamination, because the references cited in the request for reexamination of the '592 patent had already been considered in the application for the '228, which was withdrawn from issue so that the '228 examiner could consider those references. The defendants requested a stay of the suit involving the '228 patent. An order of February 7, 2008 initially

denied the motion to stay the '228 case, vacated the stay of the suit concerning the '592 patent, and consolidated the cases. (Document 24 in 07 CV 4551). That order, except for consolidation, was reversed on appeal. (Document 46 in 07 CV 4551).

The PTO issued an office action in the '592 reexamination on March 28, 2008, about fourteen months after the reexamination was initiated. (Document 35-2 in 07 CV 4551). TimeBase interviewed with the Examiners in April, 2008. On May 12, 2008, TimeBase filed its response to the office action, and included the prior art references cited in the prosecution of the '228 patent.

There has been no further action from the PTO in the six months since May. The '592 reexamination is now almost twenty-four months old, seven months beyond the date predicted by the defendants for completion of reexamination. Reexaminations are increasing in number, and their duration is increasing. Compare Exhibit 36-1 in 07 CV 1687, PTO data as of June 30, 2006, with Exhibit 1 to the Declaration of Arthur Gasey, PTO data as of September 30, 2008.

The Court's order of January 9, 2008 requires that "future status reports submitted by each party shall contain detailed explanations of the exact steps that have been taken and those steps yet to be completed in the examination process." (Document 49 in 07 CV 1687). The steps taken in the reexamination of the '592 patent are the PTO's March 28, 2008 office action, TimeBase's interview with the Examiners on April 24, and TimeBase's summary of the interview, response, and information disclosure statement filed on May 12, 2008.

As for steps yet to be completed, the PTO can confirm original claims, require amendment, or cancel claims, or some combination of those three. If the PTO issues a

reexamination certificate that confirms at least some of the asserted claims, TimeBase will advise the Court and move for a lift of the stay of the consolidated case. If the PTO cancels all the claims of the '592 – an unlikely event in TimeBase's view -- TimeBase will advise the Court and immediately move to lift the stay so the case can proceed with respect to the '228 patent.

If the PTO does not confirm any original claim – also an unlikely event – the actions taken depend upon the details of the PTO's action. The actions taken could be a motion to lift the stay, or further activities in the PTO.

Respectfully submitted,

/s/ Arthur A. Gasey

Joseph N. Hosteny
Arthur A. Gasey
Niro, Scavone, Haller & Niro
181 West Madison, Suite 4600
Chicago, Illinois 60602
Telephone: (312) 236-0733

Michael R. Cunningham
Gray, Plant & Mooty
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Phone: 612/632-3000
Fax: 612/632-4444
michael.cunningham@gpmlaw.com

Attorneys for TimeBase Pty Ltd.

CERTIFICATE OF SERVICE

The undersigned certifies that this **STATUS REPORT REGARDING REEXAMINATIONS** was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following at their email address on file with the Court on December 5, 2008.

Calvin L. Litsey
David J.F. Gross
Mary V. Sooter
Shawn T. Gordon
Kevin P. Wagner
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Phone: 612-766-7000
Fax: 612-766-1600
clitsey@faegre.com
dgross@faegre.com
cdrown@faegre.com

/s/ Arthur A. Gasey _____